

Amended by R.1995 d.491, effective September 5, 1995.  
 See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

**SUBCHAPTER 8. REFERRAL TO OFFICE OF ADMINISTRATIVE LAW**

**5:91-8.1 General**

(a) In the event mediation efforts are unsuccessful, the Council upon the motion of any party or in its own discretion shall determine whether to refer the matter to the Office of Administrative Law (OAL) for resolution as a contested case. Prior to determining whether a case is contested, the Council may in appropriate instances require all parties to submit affidavits of experts with regard to issues that require expert testimony and/or affidavits of individuals with personal knowledge of the facts at issue. Such affidavits should set forth, with specificity, facts sufficient to demonstrate there is a genuine issue that requires a hearing. From these submitted papers, the Council may determine if there is an issue of material fact that necessitates a hearing as a contested case before the OAL.

(b) Upon determining that the matter shall be referred to the OAL for adjudication as a contested case, the Council shall transmit the matter to the OAL together with the mediation report, the municipality's petition for substantive certification and any objections thereto, and any other papers pertinent to the adjudication.

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(c) The cost of the transcript of all oral testimony transmitted to the Council from OAL shall be shared equally by the municipality and the objectors.

**Case Notes**

Borough's petition for substantive certification was contested case to be transferred to Office of Administrative Law. *Quad Enterprises v. Borough of Paramus*, 250 N.J.Super. 256, 593 A.2d 1227 (A.D.1991).

Superior Court, Appellate Division was proper forum to resolve objection to Council on Affordable Housing certificate. *Quad Enterprises v. Borough of Paramus*, 250 N.J.Super. 256, 593 A.2d 1227 (A.D.1991).

Claim that Council on Affordable Housing improperly failed to transfer case to Office of Administrative Law was to be resolved in Superior Court, Appellate Division. *Quad Enterprises v. Borough of Paramus*, 250 N.J.Super. 256, 593 A.2d 1227 (A.D.1991).

**SUBCHAPTER 9. COUNCIL'S REVIEW OF THE INITIAL DECISION**

**5:91-9.1 Review**

Within 45 days after the issuance of an initial decision from the Office of Administrative Law, the Council shall review the initial decision of the Administrative Law Judge,

the record upon which it is based and all exceptions to the initial decision. The Council shall then accept, reject or modify the decision and issue its final decision on the matter. Unless the Council accepts, modifies or rejects the initial decision within this period of time, the decision of the Administrative Law Judge shall be deemed adopted and shall become the final decision of the Council. For good cause shown, the time limit established under this subchapter may be extended pursuant to N.J.A.C. 1:1-16.6.

**SUBCHAPTER 10. GENERAL POWERS**

**5:91-10.1 Restraining orders**

At any time, upon its own determination or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may issue such orders as may be necessary to require that a participating municipality take appropriate measures to preserve scarce resources that may be essential to the satisfaction of the municipality's obligation to provide for its fair share of its region's present and prospective need for low and moderate income housing.

**Case Notes**

Rulemaking by Council on Affordable Housing was reasonably required to fulfill purpose of the Fair Housing Act. *Holmdel Builders Ass'n v. Township of Holmdel*, 121 N.J. 550, 583 A.2d 277 (1990).

Exercise of rulemaking authority by Council on Affordable Housing under Fair Housing Act was incomplete. *Holmdel Builders Ass'n v. Township of Holmdel*, 121 N.J. 550, 583 A.2d 277 (1990).

Statutory basis for development fees as permissible inclusionary zoning devices provided by Fair Housing Act. *Holmdel Builders Ass'n v. Township of Holmdel*, 121 N.J. 550, 583 A.2d 277 (1990).

Moratorium on land development was not an unconstitutional "taking". *Tocco v. New Jersey Council on Affordable Housing*, 242 N.J.Super. 218, 576 A.2d 328 (A.D.1990), certification denied 122 N.J. 403, 585 A.2d 401, certiorari denied 111 S.Ct. 1389, 499 U.S. 937, 113 L.Ed.2d 446.

**5:91-10.2 Accelerated denial of substantive certification**

At any time, upon its own determination, or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may deny substantive certification without proceeding further with the mediation and review process.

**5:91-10.3 Administrative orders**

At any time, upon its own determination, or upon the application of an interested party, the Council may issue an administrative order for a municipality to provide information or take an action that expedites the Council's administrative process and/or the production of low and moderate income housing. The Council may dismiss a municipal housing element and fair share plan by administrative order when the order sets forth in detail the reasons for the dismissal and the actions the municipality must take before it may refile its housing element and fair share plan.

## SUBCHAPTER 11. REGIONAL CONTRIBUTION AGREEMENTS

### 5:91-11.1 Terms of agreement

(a) A municipality may propose to transfer up to 50 percent of its fair share to another municipality within its housing region by means of a contractual regional contribution agreement pursuant to N.J.S.A. 52:27D-312 between the two municipalities. The contractual agreement shall be submitted to the Council by the sending municipality and shall specify, at a minimum, the number of units to be transferred and the amount of compensation to be paid to the receiving municipality in return for such a transfer. The Council may require amendments to the contract upon its review of the regional contribution agreement and prior to the Council's approval.

(b) A regional contribution agreement which has been approved by the Council by the granting of a petition for substantive certification to the sending municipality, may be executed once the Council awards substantive certification.

### 5:91-11.2 Statements of intent

(a) Municipalities which intend to enter into a regional contribution agreement as a receiving municipality shall notify the Council of their interest and of any proposed conditions or requirements for their participation.

(b) Statements of intent submitted under this section shall be in the form of a resolution adopted by the municipality.

(c) Statements of intent filed with the Council pursuant to this section shall not preclude any receiving municipality from negotiating with any potential sending municipality.

(d) Statements of intent are not binding upon the municipality.

(e) No receiving municipality shall be required to accept a greater number of low and moderate income units through an agreement than it has expressed a willingness to accept in its statement, but the number stated shall not be less than a reasonable minimal number of units, as determined by the Council, not to exceed 100.

### 5:91-11.3 Project plan review by the New Jersey Housing and Mortgage Finance Agency

(a) The receiving municipality shall submit a proposed project plan to the New Jersey Housing and Mortgage Finance Agency that delineates the manner in which the receiving municipality shall create or rehabilitate low and moderate income housing in response to the regional contribution agreement. The project plan shall be in such a form and contain such information as the Agency may require. The Council or the Agency may impose time limitations for the submission of a project plan, or any updates or conditions thereto.

(b) The Agency may undertake such review as is necessary, including scheduling meetings or hearings and requiring further information, studies or reports, in order to render a timely report on the feasibility of the proposed plan for the Council. Failure of the receiving municipality to promptly or properly comply with the requirements of the Agency may result in the Agency's refusal to certify the feasibility of the proposed project.

### 5:91-11.4 Review by county planning board or agencies

(a) Regional contribution agreements shall be reviewed by the county planning board or agency of the county in which the receiving municipality is located. The county planning board or agency shall consider whether or not the regional contribution agreement is in accordance with sound comprehensive regional planning, in accordance with the terms of the master plan and zoning ordinance of both the sending and receiving municipalities, its own county master plan, and the State Development and Redevelopment Plan (SDRP).

(b) All determinations of a county planning board or agency shall be in writing and shall be made within such time as the Council may prescribe, beyond which the Council shall make those determinations. No fee shall be paid to the county planning board or agency for its review pursuant to this subsection.

(c) In the event that there is no county planning board or agency in the county in which the receiving municipality is located, the Council shall determine whether or not the agreement is in accordance with sound comprehensive regional planning.

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### 5:91-11.5 Review by the Council

(a) The Council shall approve a regional contribution agreement upon finding that:

1. The agreement provides a realistic opportunity for low and moderate income housing within convenient access to employment opportunities;
2. The agreement is consistent with sound comprehensive regional planning; and
3. The receiving municipality's project plan is a feasible means of achieving the purposes of the agreement, as determined by the Agency.

(b) Upon recommendation of the Agency, the Council may approve as part of the regional contribution agreement, a provision that the time limitations for contractual guarantees or resale controls for low and moderate income units included in the proposed project be for less than 30 years if the Agency determines that modification is necessary to assure the economic viability of the project.